

Supreme Court, U. S.

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No. 94-1239

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1994

FULTON CORPORATION,

Petitioner,

V.

JANICE H. FAULKNER, SECRETARY OF REVENUE,

Respondent.

On Writ of Certiorari to the
Supreme Court of North Carolina

JOINT APPENDIX

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Petition for Writ of Certiorari was filed on 1/17/95
Petition for Writ of Certiorari was granted on 4/17/95

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FULTON CORPORATION V. JANICE H. FAULKNER,
SECRETARY OF REVENUE

No. 94-1239

Relevant Docket Entries

<u>Date</u>	<u>Proceedings</u>
05/1/91	Complaint filed
05/31/91	Answer filed
09/6/91	Plaintiff's Motion for Summary Judgment filed
09/30/91	The following exhibits were filed in support of Plaintiff's Motion for Summary Judgment: Deposition of Frank S. Goodrum, Jr. Affidavit of J.D. Freeman to which is attached the return of tax for which refund is sought herein State of North Carolina Intangible Personal Property Tax Rules and Regulations for Taxable Year 1989 Intangibles Tax Section Stock and Bond Values as of December 31, 1990 Taxable Percentages for N.C. Income and Intangibles Tax Purposes as of December 31, 1990

Affidavit of Robert Gibbs Smith

10/4/91 Defendant's Motion for Summary Judgment filed

10/25/91 The following exhibits were filed in support of Defendant's Motion for Summary Judgment:

Affidavit of S. Nicole Underwood

Affidavit of Anthony H. Doster

Affidavit of Danny L. Massey

11/15/91 Order Allowing Defendant's Motion for Summary Judgment and Denying Plaintiff's Motion for Summary Judgment filed

01/8/92 Record on Appeal in North Carolina Court of Appeals (including separate deposition of Frank S. Goodrum, Jr., Intangibles Tax Section Stock and Bond Values as of December 31, 1990, Taxable Percentages for N.C. Income and Intangibles Tax Purposes as of December 31, 1990) filed

6/11/92 Opinion of North Carolina Court of Appeals filed

12/9/94 Opinion of the Supreme Court of North Carolina filed

1/13/95 Petition for Writ of Certiorari to Supreme Court of the United States filed

2/16/95 Respondent's Brief in Opposition to Petition for Writ of Certiorari filed

4/17/95 Order of United States Supreme Court Granting Certiorari filed

WAKE COUNTY SUPERIOR COURT
(Title Omitted in Printing)
COMPLAINT

COMES NOW the Plaintiff which alleges and says:

Parties

1. Plaintiff is a corporation chartered under the laws of the State of North Carolina, having its principal place of business in Salisbury, N.C.
2. Defendant is the Secretary of Revenue of the State of North Carolina. She is being sued in her official capacity only.

Jurisdiction

3. This action is brought pursuant to N.C.G.S. § 105-267 for refund of intangibles taxes paid by Plaintiff to defendant for tax year 1990 and pursuant to the general jurisdiction of this court to adjudicate claims under 42 U.S.C. § 1983. All conditions precedent to the filing of this action have been met.

Facts

4. Plaintiff has paid intangibles tax levied under N.C.G.S. § 105-198 et seq. to defendant for the tax year 1990 in the amount of \$10,884.00. On January 30, 1991, Plaintiff demanded refund of this tax in the manner required by N.C.G.S. § 105-267 and 90 days have expired after that date without any refund being forthcoming.

5. Defendant imposed this tax under N.C.G.S. § 105-203 upon corporate stock (including mutual fund shares) owned by Plaintiff in other corporations that either (1) have no income allocable to this State for North Carolina corporate income tax purposes and thus have no income subject to the North Carolina income tax or (2) have only a minority portion of their income allocable to this State and thereby subject to the North Carolina income tax.

6. The said allocation outside of North Carolina of all or the majority part of the incomes of these other corporations is required by various provisions of Chapter 105 because these corporations' commercial domiciles are located outside of this State, or because their property holdings or business situs or activities are located outside of this State.

7. The out-of-state locations of the commercial domiciles, property and activities of these other corporations affect the Plaintiff's intangibles tax liability on shares of their stock because the percentage of each such corporation's income that is not allocable to this State (100% in most cases) is required by Chapter 105 to be multiplied times the value of its stock to yield the amount subject to intangibles tax in Plaintiff's return.

8. Therefore, the Plaintiff's intangibles tax liability on the stock of these other corporations increases due to their out-of-state business and property locations. Conversely, the more local their business and property, the less would their shares be subject to intangibles tax in the hands of North Carolina taxpayers. Furthermore, owners of "purely local" North Carolina corporations pay no intangibles tax on their shares.

First Cause of Action

Commerce Clause

9. The taxing scheme described in paragraphs 5-8 violates the Commerce Clause of the United States Constitution, Article I, Section 8, Clause 3, and so Plaintiff is entitled to refund of the \$10,884.00 taxes it paid, with interest from date of payment.

Second Cause of Action

Uniformity/Equal Protection

10. The taxing scheme described in paragraphs 5-8 results in taxation of a single class of property (corporate stock) in a manner that is not uniform in violation of Clause (2), Section

2, Article V of the North Carolina Constitution, and denies to Plaintiff due process of law and the equal protection of the laws in violation of Section 19 of Article 1 of the North Carolina Constitution and the Fourteenth Amendment to the United States Constitution, and so Plaintiff is entitled to refund of \$10,884.00 taxes it paid, with interest from date of payment.

Third Cause of Action

42 U.S.C. § 1983

11. The taxing scheme described in paragraphs 5-8 and enforced by Defendant under color of State law violates Plaintiff's civil rights under the Commerce Clause of the United States Constitution and under the due process clause and the equal protection clause of the Fourteenth Amendment to the United States Constitution and Plaintiff is entitled to a declaration that N.C.G.S. § 105-203 is unconstitutional, to damages in the amount of \$10,884.00 with interest from payment of said amount to Defendant, plus attorneys fees, as provided by 42 U.S.C. §§ 1983 and 1988 and the recent decision of the United States Supreme Court in Dennis v. Higgins, ___ U.S. ___ (1991).

Prayer for Relief

WHEREFORE, Plaintiff demands:

a. A judgment declaring that N.C.G.S. § 105-203 violates the United States Constitution and the North Carolina Constitution and therefore is null and void insofar as it imposes a tax on any corporate stock (including mutual fund shares);

b. A judgment ordering defendant to refund to Plaintiff \$10,884.00 with interest from date of payment of said amount by Plaintiff to Defendant, plus Plaintiff's attorneys fees, expenses and costs;

c. Such other and further relief as to the court shall seem appropriate.

This is the 1st day of May, 1991.

/s/ Jasper L. Cummings, Jr.
Jasper L. Cummings, Jr.

WAKE COUNTY SUPERIOR COURT (Title Omitted in Printing) ANSWER

NOW COMES the Attorney General on behalf of the Defendant and, answering plaintiff's complaint, alleges and says:

FIRST DEFENSE

1. Paragraph 1 is admitted;
2. Paragraph 2 is admitted;
3. It is admitted that this is an action brought pursuant to G.S. § 105-267 for the refund of intangible personal

property tax paid by plaintiff to defendant for taxable year 1990 and that all conditions precedent to the right of plaintiff to bring suit for refund under that section have been met. The remaining allegations of Paragraph 3 are denied, and it is expressly denied that jurisdiction lies under 42 U.S.C. § 1983;

4. Paragraph 4 is admitted;

5. It is admitted that G.S. § 105-203 imposes an intangible personal property tax on shares of stock owned by North Carolina residents. The remaining allegations of Paragraph 5 are denied for the reason that the provisions of G.S. § 105-203 speak for themselves. Further, it is expressly denied that defendant imposed the intangibles tax;

6-8. The extent to which plaintiff is liable for intangible personal property tax with respect to shares of stock is governed by G.S. § 105-203, the provisions of which statute speak for themselves. The allegations of Paragraphs 6-8 are, therefore, denied; and

9-11. Paragraphs 9-11 are denied.

SECOND DEFENSE

In the event this Court determines that G.S. § 105-203 is unconstitutional, that determination should operate prospectively only.

WHEREFORE, having fully answered plaintiff's complaint, defendant respectfully prays the Court:

1. That plaintiff have and recover nothing of the defendant;
 2. That plaintiff's action be dismissed;
 3. That no costs or fees be taxed against defendant;
- and
4. For such other and further relief as to the Court may seem just and proper.

This the 31st day of May, 1991.

LACY H. THORNBURG
Attorney General

/s/ Marilyn R. Mudge
Marilyn R. Mudge

Assistant Attorney General

(Certificate of Service Omitted in Printing)

WAKE COUNTY SUPERIOR COURT AFFIDAVIT OF J.D. FREEMAN

I, J.D. Freeman, hereby swear that the following statements are true of my own personal knowledge.

I signed the 1990 Intangible Personal Property Tax Return for Fulton Corporation as its Assistant Secretary. A true copy of that return is attached to this affidavit as Exhibit A.

This the 9th day of August, 1991.

/s/ J.D. Freeman (SEAL)
J.D. Freeman

(Jurat Omitted in Printing)

PART IV - SHARES OF STOCK; UNITS OF INVESTMENT FUNDS, ETC. (G.S. 105-203)

[illegible]

WAKE COUNTY SUPERIOR COURT

STATE OF NORTH CAROLINA INTANGIBLES
PERSONAL PROPERTY TAX RULES AND
REGULATIONS FOR TAXABLE YEAR 1989 [Excerpt p. 21;
this excerpt appears at pp. 13-14, Record on Appeal]

The taxable value of shares of stock is determined by multiplying the fair market value of the stock by the "taxable percentage" applicable to such stock. Since taxable percentages of stocks may vary from year to year, the intangibles tax section publishes a percentage list each year. This list is available, upon written request, for use by accountants, tax practitioners, attorneys and other parties preparing intangibles tax returns. Moreover, taxable percentages for certain stocks may be obtained from local revenue offices or by writing directly to the intangibles tax section. Corporations which furnish stockholders the taxable percentages of their stock should verify the taxable percentage with the intangibles tax section before notifying stockholders. Taxable percentages are computed by the Corporate Income and Franchise Tax Division of the North Carolina Department of Revenue, using the applicable allocation formula provided by law. Generally, the following rules apply:

- (1) Stocks of corporations which operate "entirely within" North Carolina are not taxable.
- (2) Stocks of corporations which operate "entirely outside" North Carolina are taxable at 100 percent.

- (3) Stocks of corporations which derive income from both in and out of North Carolina are taxable at a percentage equal to the percent of such corporation's entire net income allocated outside North Carolina.
- (4) Parent and subsidiary corporations are considered as separate and distinct legal entities, and the fact that a subsidiary corporation pays to the State of North Carolina a franchise tax, a property tax and an income tax does not affect the taxability of shares of stock of the parent corporation.
- (5) In the case of mutual funds, investment trusts and investment funds which are located outside North Carolina and which are not required to file income tax returns with this State, the shares of units of such funds or trusts are 100% taxable. If such funds or trusts operate in this State and are required to file income tax returns with North Carolina, then the taxable percentages of the shares or units will be computed in accordance with the law.
-

WAKE COUNTY SUPERIOR COURT
AFFIDAVIT

I, Robert Gibbs Smith, do hereby swear and affirm that the following statements are true of my own personal knowledge.

I am a resident of North Carolina and I have invested in various corporate stocks. In making my investments I have been aware of the fact that when the "taxable percentage" of the corporate stock is low it will be less subject to the North Carolina intangibles tax. Therefore, I have in fact in the past selected stocks to buy partly because they had a low "taxable percentage" for North Carolina intangibles tax purposes.

This the 29th day of August, 1991.

/s/ Robert Gibbs Smith (SEAL)
Robert Gibbs Smith

(Jurat Omitted in Printing)

WAKE COUNTY SUPERIOR COURT
(Title Omitted in Printing)
AFFIDAVIT OF S. NICOLE UNDERWOOD
IN SUPPORT OF DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT

S. NICOLE UNDERWOOD, being first duly sworn,
deposes and says:

1. I am over eighteen years of age and make this affidavit of my own personal knowledge;

2. I am presently the Director of the Tax Research Division of the North Carolina Department of Revenue, a position I have held since September 1, 1986. I have been employed by the Department of Revenue since October 1, 1971. Prior to that date I was employed for 8 years by the Department of Tax Research, which was merged into the Department of Revenue on October 1, 1971;

3. The Tax Research Division compiles information concerning North Carolina's state and local tax structure and furnishes it to the Governor, the General Assembly, the Advisory Budget Commission, other state agencies, industrial prospects, and the general public. As director of the Tax Research Division, I am familiar with all of the tax schedules administered by the Department of Revenue pursuant to the North Carolina Revenue Laws, including the intangible personal property tax. I am also familiar with the requests for tax information received by the Division and with the Division's responses;

4. The Tax Research Division responds to requests for information on behalf of corporations considering locating a facility within North Carolina or otherwise expanding their business into the state. These inquiries are received from the Industrial Development Division of the Department of Economic and Community Development, local economic development agencies, private site selection consulting firms, and the corporations themselves;

5. Inquiries by or on behalf of these industrial prospects typically relate to the state corporate income and franchise taxes, the local ad valorem tax, and other taxes for which the corporation will be liable by virtue of its property or activity within North Carolina;

6. To the extent that such inquiries concern the intangible personal property tax, they most often involve the corporation's liability for the tax imposed by G.S. § 105-201 on its accounts receivable;

7. To my knowledge, the Tax Research Division has received no requests from corporate industrial prospects for information concerning the liability of their North Carolina resident shareholders for the tax imposed by G.S. § 105-203 upon shares of stock.

Further affiant says not.

/s/ S. Nicole Underwood
S. Nicole Underwood

(Jurat Omitted in Printing)

WAKE COUNTY SUPERIOR COURT
(Title Omitted in Printing)
AFFIDAVIT OF ANTHONY H. DOSTER IN
SUPPORT OF DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT

ANTHONY H. DOSTER, being first duly sworn,
deposes and says:

1. I am over eighteen years of age and make this affidavit of my own personal knowledge;
2. I am presently the Assistant Director of the Business/Industry Development Division of the North Carolina Department of Economic and Community Development. I have served in that capacity since April 1, 1989. From December, 1986, until assuming my current position, I served as Assistant Director of the Tax Research Division of the North Carolina Department of Revenue. My prior experience in the areas of tax and financial management and data processing was both in the private sector and with the United States House of Representatives;
3. In my capacity as Assistant Director of the Business/Industry Development Division, I am responsible for research, publications, advertising, marketing, and tax consultation in support of business recruitment for the State of North Carolina. I consult with business and industrial prospects concerning the North Carolina tax consequences of establishing a facility within the State. I am familiar with the application of the North Carolina tax laws to business

enterprises, including multistate corporations and their shareholders. I am also familiar with the matters which are of concern to an out-of-state or multistate corporation considering locating a facility within the state;

4. Corporations interested in developing or expanding their interstate activity by locating a facility in North Carolina are typically concerned about the following areas: the availability of a labor pool with appropriate skills, prevailing wages, the availability of buildings and sites, utilities and utility rates, the quality of higher education, the cultural environment, transportation, the availability of financing, and the state tax structure;

5. Inquiries by multistate corporations concerning the state tax structure relate to the North Carolina tax consequences of the corporations' anticipated activity within the state. These questions most often concern the corporations' liability for corporate income and franchise taxes, sales and use taxes, local property taxes, and the intangibles tax on their accounts receivable;

6. Inquiries by multistate corporations concerning the availability of financing within the state relate to banking practices and state and local governmental incentives. To my knowledge, not one of the more than 150 corporate prospects with whom I have consulted during my tenure as Assistant Director of the Business/Industry Development Division has inquired concerning the effect of the tax imposed by G.S. § 105-203 on the corporation's ability to raise capital.

Further affiant says not.

/s/ Anthony H. Doster

Anthony H. Doster

(Jurat Omitted in Printing)

WAKE COUNTY SUPERIOR COURT
(Title Omitted in Printing)
AFFIDAVIT OF DANNY L. MASSEY
IN SUPPORT OF DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT

DANNY L. MASSEY, being first duly sworn, deposes and says:

1. I am over eighteen years of age and make this affidavit of my own personal knowledge;

2. I have been employed in the Intangibles Tax Division (now Section) of the North Carolina Department of Revenue for 25 years. I was first employed as an auditor and later served as Audit Supervisor and Assistant Director of the Division. On January 1, 1987, I was appointed Chief of the Intangibles Tax Section, and I have held that position since that date;

3. In my capacity as Chief of the Intangibles tax Section, I am familiar with the Intangibles Personal Property Tax Article of the North Carolina Revenue Laws, G.S. §§ 105-198 *et seq.* I have custody of the records of the Intangibles Tax Section and am familiar with those pertaining to Fulton Corporation, the plaintiff in this action;

4. I am familiar with the provisions of G.S. § 105-203, which imposes the tax on shares of stock owned by North Carolina residents and which allows a deduction from the value of such stock related to the "taxable percentage" of the issuing corporation. This deduction has been a part of statute now codified as G.S. § 105-203 since 1939;

5. To my knowledge, excepting the correspondence preceding the filing of this suit, the Intangibles Tax Section has since 1939 received no letter or other communication concerning the constitutionality of the "taxable percentage" deduction or its effect on the ability of interstate corporations to attract capital;

6. As evidenced by its Articles of Incorporation, a certified copy of which is attached as Exhibit A, plaintiff was organized as L and S Furniture Company in 1940. In 1964 the Articles were amended to change the corporate name to Fulton Corporation and to authorize the corporation to "acquire and hold shares, stocks, debentures, debenture stocks, bonds, obligations, and securities issued or granted by any Company constituted or carrying on business in the United States, or in any colony, or dependency, or possession thereof, or in any foreign country . . ."

7. As reflected on its 1990 intangible personal property tax return, a copy of which is attached as Exhibit B, Fulton Corporation's stock portfolio as of December 31, 1990, included shares in six corporations, five of which were reported as 100% taxable under G.S. § 105-203. The remaining corporation was reported as 54% taxable. The total value of Fulton's stock portfolio was \$7,005,598.00, of which \$4,353,638 was reported as taxable under G.S. § 105-203.

Further affiant says not.

/s/ Danny L. Massey
 Danny L. Massey

(Jurat Omitted in Printing)

[Exhibit A]

To all whom these presents shall come, Greeting:

I, Rufus L. Edmisten, Secretary of State of the State of North Carolina, do hereby certify the following and hereto attached (8 sheets) to be a true copy of

ARTICLES OF INCORPORATION
 OF
 FULTON CORPORATION

the original of which is now on file and a matter of record in this office.

In Witness Whereof, I have hereunto set my hand and affixed my official seal.

Done in Office, at Raleigh, this 24th day of October in the year of our Lord 1991.

[State Seal]

/s/ Rufus L. Edmisten
 Secretary of State

THIS IS TO CERTIFY that we, the undersigned, do hereby associate ourselves into a corporation under and by virtue of the laws of the State of North Carolina, and do hereby severally agree to take the number of shares of capital stock in said corporation set opposite our respective names, and to that end do hereby agree:

FIRST: The name of this corporation is L. AND S. FURNITURE COMPANY.

SECOND: The location of the principal office of the corporation in this State shall be at Salisbury, Rowan County, North Carolina, but the corporation may have one or more places of business out of the State as well as in said State.

THIRD: The objects and purposes for which this corporation is formed are as follows:

(a) To engage in the retail furniture business - buying, selling and handling furniture, house furnishings and such other articles as are accustomedly handled and sold in connection with such a retail business.

(b) To do a general furniture and house goods business; to manufacture, repair, alter, purchase, sell, exchange, import, lease, rent, and deal in, as principal and on its own behalf, as well as agent or factor for others, all kinds of modern or antique furniture, musical instruments, rugs, carpets and other floor coverings, curtains, draperies, tapestries and pictures of every kind, statuary, bronzes, works of art, bric-a-brac, glass, stoves, ranges and all kinds of articles used and intended to be used, or capable of being used in furnishing or in beautifying or equipping and rendering liveable, any private home, office or public building.

(c) To sell or otherwise dispose of said merchandise either at wholesale or at retail, for cash, on open account, or on the installment payment plan, and to take and receive, own, hold, sell, exchange, hypothecate, or otherwise deal in chattel mortgages, conditional sales contracts, open notes and open accounts, leases, and other evidences of indebtedness of every kind or description.

(d) To own undivided interests in one or more partnerships and to be either a general or a limited partner therein, subject to all liabilities and having and using all powers and privileges prescribed by the laws of the State of North Carolina with respect to partnerships, and no officer, director nor stockholder shall be subject to any individual and personal liability because of, arising out of, or resulting from the ownership by this corporation of such partnership interest.

(e) And in order to properly prosecute the objects and purposes above set forth the corporation shall have full power and authority to purchase, lease, or otherwise acquire, hold, manage, operate, mortgage, pledge, convey, and

otherwise dispose of all kinds of property, both real and personal; to purchase the business, good will and all other property of any individual, firm or corporation as a going concern, and to assume all its debts, contracts and obligations; to construct, equip, maintain and operate buildings, factories, repair shops, storage warehouses and other establishments; to install, maintain and operate all kinds and types of machinery and appliances, and generally to perform all acts which may be deemed necessary or expedient for the proper and successful prosecution of the objects and purposes for which the corporation is created.

(f) In addition to the foregoing designated powers this corporation shall likewise enjoy all other corporate powers ordinarily conferred by the laws of the State of North Carolina.

FOURTH: The total authorized capital stock shall consist of ten thousand (10,000) shares of stock having a par value of Ten Dollars (\$10.00) per share, or an aggregate total par value of One Hundred Thousand Dollars (\$100,000.00); provided, however, that not in excess of 50% of such authorized capital stock may be issued as preferred stock of such character, preferences, dividend rates, redemption privileges and the like, as the stockholders may determine at the time or times of issuance.

The Corporation may begin business when 1500 shares of its capital stock, or an aggregate par value of \$15,000.00, shall have been subscribed.

FIFTH: The names and post office addresses of the subscribers to the stock of this Corporation, and the number of shares subscribed for by each, the aggregate of which being the

amount with which this Corporation will commence business, are as follows:

<u>NAME</u>	<u>POST OFFICE ADDRESS</u>	<u>NUMBER OF SHARES SUBSCRIBED</u>
Thomas M. Stanback	Salisbury, N.C.	500
Fred J. Stanback	Salisbury, N.C.	500
James A. Lewis	Charlotte, N.C.	500

SIXTH: The period of existence of this Corporation shall be unlimited.

SEVENTH: The business and resources of this Corporation shall be managed and controlled by a Board of Directors and the said Board, by a majority vote of all their number, at any regular meeting or at any special meeting called for that purpose, shall have power to make, alter, amend and rescind the by-laws; and said Board shall likewise have the power and authority to fix from time to time the amount to be reserved as a working capital.

L. AND S. FURNITURE COMPANY

1. The present name of the Corporation is L. and S. FURNITURE COMPANY.
2. The Amendments adopted pursuant to G. S. Section 55-103 are as follows:

"RESOLVED that the Charter of the corporation be changed as follows:

"1. The name of the corporation shall be changed to 'FULTON CORPORATION'.

"2. The registered office of the corporation shall be 1500 South Main Street, Salisbury, Rowan County, North Carolina, and the registered agent at such address is Fred. J. Stanback.

"3. Paragraph 3 of the existing Charter relating to objects and purposes for which the corporation is formed shall be amended as follows:

By deleting subparagraph (f) and inserting a new paragraph (f) as follows:

'(a) To acquire and hold shares, stocks, debentures, debenture stocks, bonds, obligations, and securities issued or granted by any Company constituted or carrying on business in the United States, or in any colony, or dependency, or possession thereof or in any foreign country, and debentures, debenture stock, bonds, obligations, and securities issued or granted by any government, sovereign, ruler, commissioners, public body, or authority, supreme, municipal, local, or otherwise, whether at home or abroad.

'(b) To acquire any such shares, stocks, debentures, debenture stock, bonds, obligations, or securities by original subscriptions, tender, purchase, exchange, or otherwise, and to subscribe for the same, either conditionally, or to exercise and enforce all rights

and powers conferred by or incident to the ownership thereof.

'(c) To issue debentures, debenture stock, bonds, obligations, and securities of all kinds, and to frame, constitute, and secure the same, as may seem expedient, with full power to make the same transferable by delivery, or by instrument of transfer or otherwise, and either perpetual or terminable, and either redeemable or otherwise, and to charge or secure the same by trust deed or otherwise, on the undertaking of the Company, or upon any specific property rights present and future, of the Company (including, if thought fit, uncalled capital), or otherwise however.

'(d) To advance and lend money and assets of all kinds upon such terms as may be arranged.

'(e) To facilitate and encourage the creation, issue, or conversion of debentures, debenture stock, bonds, obligations, shares, stocks, and securities, and to act as trustees in connection with any such securities, and to take part in the conversion of business concerns and undertakings into companies.

'(f) To take part in the management, supervision, or control of the business or operations of any company or undertaking, and for that purpose to appoint and remunerate any directors, accountants, or other experts or agents.

'(g) To employ experts to investigate and examine into the conditions, prospects, value, character,

and circumstances of any business concerns and undertakings, and generally of any assets, property, or rights.'

"By adding a new subparagraph 3(g) as follows:

'To engage in any lawful activity permitted under the laws of the State of North Carolina'."

3. The above Amendments were adopted by unanimous vote of the stockholders on September 30, 1964.
4. There are ten thousand (10,000) shares of common stock outstanding, each of which was entitled to vote on the above Amendments.
5. All shares outstanding voted for the above Amendments.
6. The above Amendments do not give rise to dissenters' rights under G.S. 55-101(b).

This 30 day of September, 1964.

L & S FURNITURE COMPANY

By: /s/ Fred J. Stanback
Fred J. Stanback

ATTEST:

/s/ Fred J. Stanback, Jr.
Fred J. Stanback, Jr.

[Exhibit B, the 1990 Intangibles Tax Return of Fulton Corporation, is not reproduced here because the pertinent part appears with the Affidavit of J. D. Freeman above.]

Decision of the North Carolina Court of Appeals [this may be found in the Petition for Writ of Certiorari filed January 13, 1995, 18a-38a, Appendix B (note that the Secretary of Revenue is improperly designated there as Secretary of State)].

Decision of the Supreme Court of North Carolina to be reviewed [this may be found in the Petition for Writ of Certiorari filed January 13, 1995, 1a-17a, Appendix A].
